

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050, 5510, 8550, 8552.1, 8553 and 8555 of the Fish and Game Code and to implement, interpret or make specific sections 713, 8043, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and 8559, of said Code, proposes to amend sections 163 and 164, Title 14, California Code of Regulations, relating to the Commercial Herring Fishery.

Informative Digest/Policy Statement Overview

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; and landing and monitoring requirements.

The proposed regulations would establish fishing quotas, establish season dates and times that fishing operations are allowed, grant authority to the Director of Fish and Game (Director) for the 2008-09 season and beyond to choose the quota within a range of 0-15% of the most current biomass estimate for San Francisco Bay, grant the authority to the Director for the 2008-09 season and beyond to choose season dates with input from the Director's Herring Advisory Committee (DHAC) for the San Francisco and Tomales Bay fisheries, allow herring permittees in San Francisco Bay to be up to three nautical miles from their nets, require the \$50 fee for boat transfers and substitution requests be submitted with the written request for transfer or substitution, modify a section to correspond with Section 163.5 regarding penalties for late applications, provide clarifying language regarding boat registration, and correct the Herring Eggs on Kelp Permit Application number to correspond with the 2007-08 season application.

The following is a summary of the proposed changes in Sections 163, and 164, Title 14, CCR:

- The proposed regulations would establish fishing quotas by area for the 2007-08 herring fishing season, based on the most recent biomass assessments of spawning populations of herring. The Department is recommending the San Francisco Bay quota be set at 1,094 tons, which represents 10 percent of the 2006-07 spawning biomass estimate. If the Commission were to adopt San Francisco Bay this quota, a 1,094 ton quota this would result in a 1.9 ton individual quota for a "CH" gillnet permittee and a 0.9 ton individual quota for a non-"CH" gillnet permittee participating in the HEOK fishery.
- For the 2008-09 season and beyond, the proposed regulations would grant authority to Director of Fish and Game to choose the quota within a range of 0-15% of the most current biomass estimate for San Francisco Bay. The Director would establish the annual quota based on the determination of the Department as to the status of the stock utilizing the best science available, including but not limited to information from recent fishery-independent field surveys, commercial catches, age composition and environmental data. The Director shall provide the Executive Director of the Fish and Game Commission and permitted herring fishermen with a memo stating the annual quota by May 15 of each year for the upcoming herring season.

- There are no quota changes proposed for Humboldt Bay/Crescent City Harbor or Tomales Bay for the 2007-08 herring season.
- Proposed regulations would allow fishing in San Francisco Bay from 5:00 p.m. on Sunday, December 2, 2007 until noon on Friday, December 21, 2007 ("DH" gill net platoon only). Recommended dates for the odd and even platoons are from 5:00 p.m. on Wednesday, January 2, 2008, until noon on Friday, March 21, 2008.
- The proposed regulations would set the dates of the roe herring fisheries in Tomales Bay from noon on Wednesday, December 26, 2007, until noon on Friday, February 29, 2008.
- For the 2008-09 season and beyond, the proposed regulations would grant the authority to the Director of Fish and Game to choose season dates, with input from the DHAC, for the San Francisco and Tomales Bay fisheries. The Director shall provide the Executive Director of the Fish and Game Commission and permitted herring fishermen with a memo stating the season dates by May 15 of each year for the upcoming herring season.
- A proposed amendment to the regulations would allow herring permittees in San Francisco Bay to be within 3 nautical miles of their nets while fishing instead of the existing 1 nautical mile regulation starting with the 2007-08 season.
- The proposed regulations would amend a section to require that the fee of \$50 for boat transfers and permittee substitution requests must be submitted along with the written request for transfer for substitution.

Following are minor changes proposed to clarify and simplify the regulations.

- The proposed regulations would amend a section to correspond with Section 163.5 regarding penalties for late applications.
- The proposed regulations would correct the herring Eggs on Kelp permit application number in subsection 164 (h)(1) to coincide with the 2007-08 season application.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the County Administration Building, Board of Supervisors Hearing Room, 105 East Anapamu Street, 4th Floor, Santa Barbara, California on Friday, August 10, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Crowne Plaza Cedar Room, 45 John Glenn Drive, Concord, California on Friday, October 12, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before October 5, 2007, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on October 9, 2007. All comments must be received no later than October 12, 2007, at the hearing in Concord, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sheri Tiemann at the preceding address or phone number. **John Mello, Marine Region, phone (707) 441-5755, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed 2007-08 regulations would affect California's commercial herring fishermen and herring processing plants, all of which are small businesses as defined under Government Code Section 11342.610, but should not affect the ability of California businesses to compete with businesses in other states. Depending on the decision of the Fish and Game Commission (Commission), harvest quotas for San Francisco Bay herring fishermen could decrease from the 2006-07 quota of 4,502 tons to 1,094 tons for 2007-08. In light of the recommended 1,094 ton quota for 2007-08, the maximum potential adverse economic impacts for 2007-08 are given in the table below. Note, variability in environmental and ocean conditions, and volatility in future herring biomass estimates, prevent realistic forecasts of future economic impacts to the herring industry, beyond the 2007-08 season.

Maximum potential economic impacts from proposed 2007-08 herring fishery quota regulations, relative to year 2006-07 allowable quotas.			
Season(s)	Business Economic Output	Jobs	Wages and Earnings
2007-08	\$ (4,965,841)	-61	\$ (2,525,179)
After 2007-08	Unknown	Unknown	Unknown
<i>*All dollar amounts are in year 2006 prices (2006\$). Negative values are incremental losses in output, jobs, or wages relative to last year, and denoted with parentheses or minus sign.</i>			

These maximum potential economic impacts are based on changes in the allowable harvest quota relative to the 2006-07 season. Thus the projected maximum potential economic impacts assume the entire 2006-07 harvest quota was utilized to generate business revenue, jobs, and wages. Similarly, the above maximum potential economic impact projections, assume the entire 2007-08 allowable quotas will be utilized. Differences in the harvest potential between the fishing seasons are then used to estimate incremental impacts to revenue, output, jobs, and earnings, arising from the proposed regulations. However, the probable impacts are expected to be much less since the San Francisco Bay herring fishery only harvested 6.5% of the allowable 4,502 ton quota in the 2006-07 San Francisco Bay herring season. Using actual 2006-07 landings history as the initial point of comparison to the proposed regulations, may offer economic projections more indicative of reality.

Relative to actual landings observed in the 2006-07 San Francisco Bay herring fishery, the potential economic impacts projections would be as shown in the table below.

Potential economic impacts from proposed 2007-08 herring fishery regulations, relative to year 2006-07 landings history.			
Season(s)	Business Economic Output*	Jobs	Wages and Earnings*
2007-08	\$ 1,168,969	14	\$ 594,432
After 2007-08	Unknown	Unknown	Unknown
<i>*All dollar amounts are in year 2006 prices (2006\$). Negative values are incremental losses in output, jobs, or wages relative to last year, and denoted with parentheses or minus sign.</i>			

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None
- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new fees or reporting requirements stipulated under the proposed regulations.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: July 17, 2007

John Carlson, Jr.
Executive Director